

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Juan Maestre,

Plaintiff,

vs.

P/O John Rajkowski, badge # 3571,
P/O Benjamin Cespedes, badge # 7263, and
P/O John Does 1-3,

Defendants.

JURY TRIAL DEMANDED

Civil Action No. 2:10-cv-04310-PBT

AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. Plaintiff Juan Maestre brings this action pursuant to 42 U.S.C. § 1983 seeking relief for use of excessive force in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I Section 8 of the Pennsylvania Constitution by the above-captioned Philadelphia police officers individually.

2. Plaintiff seeks compensatory damages, punitive damages, and reasonable attorney's fees pursuant to 42 U.S.C. § 1988 severally and/or jointly against all named parties.

JURISDICTION AND VENUE

3. This court has original jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. §1331.

4. Venue is proper under 28 U.S.C. §1391(b) because the events giving rise to the claim occurred in the City of Philadelphia, which is in the Eastern District of Pennsylvania.

PARTIES

5. Plaintiff Juan Maestre ("Mr. Maestre") is, and at all relevant times was, an adult individual residing at 183 W. Luray Street in Philadelphia, Pennsylvania.

6. Police Officer ("P/O") John Rajkowski, badge # 3571, was at all relevant times employed by the City of Philadelphia Police Department with a proper place of service at 1515 Arch Street, Philadelphia, Pennsylvania 19102.

7. P/O Benjamin Cespedes, badge # 7263, was at all relevant times employed by the City of Philadelphia Police Department with a proper place of service at 1515 Arch Street, Philadelphia, Pennsylvania 19102.

8. P/O Jeffrey Rabinovitch, badge # 7349, was at all relevant times employed by the City of Philadelphia Police Department with a proper place of service at 1515 Arch Street, Philadelphia, Pennsylvania 19102.

9. P/O Nicole Enggasser, badge # 2781, was at all relevant times employed by the City of Philadelphia Police Department with a proper place of service at 1515 Arch Street, Philadelphia, Pennsylvania 19102.

10. P/O Terrence O'Hanlon, badge # 6373, was at all relevant times employed by the City of Philadelphia Police Department with a proper place of service at 1515 Arch Street, Philadelphia, Pennsylvania 19102.

11. At all times, the defendant police officers were acting under color of state law.

FACTS

12. On September 6, 2008, shortly after midnight, Mr. Maestre was standing outside of a bar in the vicinity of 1800 Somerset Street in the Kensington section of Philadelphia.

13. Officers Rajkowski and Cespedes approached Mr. Maestre. The officers were in a police cruiser.

14. In the Kensington area of Philadelphia, residents have a sense of distrust for police officers as a result of a history of police misconduct and officers' lack of positive community relations.

15. Mr. Maestre was suspicious of the officers' intentions as there was no apparent reason for the officers to stop him. The worst the police officers could have claimed was that Mr. Maestre was "loitering," which is not indicative of criminality, nor sufficient grounds for making a stop and search or an arrest.

16. Upon seeing the officers approach, Mr. Maestre started to run.

17. One officer chased him on foot and the other officer followed in the police cruiser.

18. When the officer chasing Mr. Maestre on foot caught up to him, the officer immediately started to punch Mr. Maestre in the face and head.

19. The other officer arrived in the police cruiser within minutes and joined in beating Mr. Maestre about the face and body.

20. Both officers Rajkowski and Cespedes punched Mr. Maestre and hit him with their night sticks in his face, abdomen, back, and legs.

21. At some point during the beating, other officers arrived.

22. Upon information and belief, at least three additional police officers arrived on the scene and proceeded to join officers Rajkowski and Cespedes in brutally beating Mr. Maestre, who was already on the ground as a result of the officers' initial blows.

23. All five officers brutally punched and kicked Mr. Maestre while he was on the ground, and despite the fact that he was not fighting back.

24. The officers also used their night sticks to beat Mr. Maestre about the face and body.

25. Mr. Maestre did not have any weapons at the time of the beating.

26. Mr. Maestre attempted to protect himself from the officers' blows by covering his face with his arms; he sustained injuries to his arms and elbows in the process.

27. Mr. Maestre lost consciousness during the beating.

28. Mr. Maestre was beaten so badly that he lost control of his bladder, at which point the defendant officers laughed and joked about how badly they had beaten Mr. Maestre.

29. After the horrific and brutal beating, Mr. Maestre was taken to Episcopal Hospital. He was unconscious upon admission.

30. Mr. Maestre's injuries were so extensive that he was transferred to Temple University Hospital's Trauma Unit for treatment, where he remained overnight.

31. Mr. Maestre did not resist the officers' attempts to subdue him. Although two officers claim that they were injured, those injuries resulted from the severity of the beating they imposed on Mr. Maestre.

32. As a result of the officers' use of excessive force and the brutal beating at the hands of at least five police officers, Mr. Maestre sustained extensive injuries to his face, arms, abdomen, and legs.

33. As a result of the beating, Mr. Maestre suffers from:

- a. cognitive and functional impairments;
- b. vision problems; and

c. psychological and emotional trauma, including anxiety and depression.

**COUNT I – EXCESSIVE FORCE IN VIOLATION OF THE FOURTH AND
FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION
PURSUANT TO 42 U.S.C. § 1983**

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34. Plaintiff incorporates paragraphs 1 – 31 as if fully set forth in this count.

35. The defendants, acting under color of state law, unlawfully deprived Mr. Maestre of his right to free from unreasonable seizures of his person and his right to liberty guaranteed by the Fourth and Fourteenth Amendments to the Constitution and Article I Section 8 of the Pennsylvania Constitution, all of which entitles him to relief under 42 U.S.C. § 1983.

36. The defendants' intentional use of excessive force against Mr. Maestre was an unjustifiable and wanton infliction of pain that subjected Mr. Maestre to physical force that grossly exceeded the circumstances and violated the standards of contemporary society.

37. As a result of this excessive force, Mr. Maestre sustained and sought treatment for extensive physical injuries, including problems with his cognitive functioning and his vision, and emotional injuries.

WHEREFORE, Plaintiff Juan Maestre demands a sum in excess of \$75,000 in compensatory and punitive damages together with lawful interests and costs, and attorney's fees and costs pursuant to 42 U.S.C. §1988.

Respectfully submitted,

HAINES & ASSOCIATES

A handwritten signature in dark ink, appearing to read 'Anthony J. Bocchino', written over a horizontal line.

ANTHONY J. BOCCHINO (PA ID 92139)

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Date: March 18, 2011

CERTIFICATE OF SERVICE

I, Danielle M. Weiss, Esquire hereby certify that I have caused this document to be filed electronically on this 18th day of March, 2011. It is available for reviewing and downloading from the ECF System, and will be served electronically on all counsel.

/s/ Danielle M. Weiss
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